

**Title 9--DEPARTMENT OF  
MENTAL HEALTH  
Division 45--Division of Developmental  
Disabilities  
Chapter 3—Services and Supports**

**PROPOSED RULE**

**9 CSR 45-3.080 Self and Family Directed Supports**

*PURPOSE: This rule establishes the scope of and requirements for a service delivery option known as Self and Family Directed Supports available through Home and Community Based waivers approved by the Health and Human Services Centers for Medicare and Medicaid Services under the authority of 1915(c) of the Social Security Act and operated by the Division of Developmental Disabilities.*

**(1) Definitions.**

- (A) Agency-based supports—supports provided by a public or private agency under contract with the Department of Mental Health (DMH) and enrolled with MO HealthNet to serve participants of any home and community-based waivers operated by DMH. Agency-based supports includes independent contractors;
- (B) Back-up plan--an emergency plan to handle situations when the employee, who is providing essential supports, is unavailable. The individual support plan (ISP) for all individuals receiving self and family directed supports must provide information about the back-up plan;
- (C) Budget Authority—the right and responsibility of the individual or their designated representative to exercise control and management of a yearly budget allocation;
- (D) Designated Representative—a person who is responsible for managing employee(s) and acting in the best interest of the individual. If the individual has a guardian appointed by a court, the legal guardian may also identify a designated representative;
- (E) Division—DMH Division of Developmental Disabilities (Division of DD);
- (F) Employment authority—the right and responsibility of the individual or their designated representative to recruit, hire, train, manage, supervise, fire, and establish the wages for employees;
- (G) Family member—a parent, step parent, sibling, child, grandchild, or grandparent by blood, adoption, or marriage; or a spouse;
- (H) Financial management service (FMS)—a service to assist the individual or designated representative with payroll-related functions. The FMS ensures the Self and family directed supports (SDS) program meets federal, state and local employment tax, labor and workers' compensation insurance rules and other requirements that apply when the participant functions as the employer of workers. The FMS makes financial transactions on behalf of the participant;
- (I) Home and community-based waivers—also referred to as home and community-based services (HCBS) in this rule; a set of long term community-based supports and services authorized by the Centers for Medicare and Medicaid Services which are provided as an

alternative to care in institutions such as nursing facilities and intermediate care facilities for individuals with intellectual disabilities;

(J) Individual Support Plan (ISP) – a document developed by the individual, with assistance as needed from a representative, in collaboration with a team. The ISP identifies strengths, capacities, preferences, needs and desired outcomes of the individual. The ISP shall encompass personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments and/or other services to be provided for the individual become part of the ISP.

ISP is also referred to as a person-centered service plan;

(K) ISP team—the individual, the individual’s designated representative (if applicable), the support coordinator and representatives of services required or desired by the individual;

(L) Natural supports—unpaid support provided through relationships that occur in everyday life. Natural supports typically involve family members, friends, co-workers, neighbors, acquaintances, and community resources;

(M) Participant—individual who is receiving services through a home and community-based waiver; and

(N) Self and family directed supports (SDS)—a program for persons with intellectual and developmental disabilities and/or their designated representative who wish to exercise more choice, control and authority over their supports. SDS is not a direct service but is a method of service delivery.

(2) Every participant/guardian or designated representative who is willing and able to assume both budget and employer responsibilities while receiving Home and Community Based waiver services from the division shall have the opportunity to self-direct, excluding any individual or designated representative meeting the criteria stated in Section twelve (12) of this rule.

(A) The participant/guardian or their designated representative is the employer and must manage the employees’ day to day activities ensuring supports are provided as written in the ISP.

(B) For the provision of personal assistant, the participant/guardian or designated representative can choose to hire anyone over the age of eighteen (18) with a high school diploma or General Education Diploma (GED).

(C) The following individuals may not provide support to a waiver participant under this service delivery option:

1. a spouse;
2. a parent of an individual under age eighteen (18);
3. a legal guardian;
4. a designated representative;
5. a person with a disqualifying criminal offense under section 630.170.1 or 2, RSMo. For reference purposes, DMH maintains an updated list of disqualifying crimes under section 630.170, RSMo, at <http://dmh.mo.gov/about/employeedisqualification/>; or
6. a person who is listed on the DMH disqualification registry under section 630.170, RSMo, for a substantiated finding of abuse, neglect or misuse of funds, or a person who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, RSMo.

(3) Any individual who is eighteen (18) years or older may identify a designated representative. Designated representatives must demonstrate a history of knowledge of the participant's preferences, values, needs, and other relevant information. The participant and his or her planning team is responsible to ensure that this representative is able to perform all the employer-related responsibilities and complies with requirements associated with representing the participant in directing services and supports

(4) The following individuals may be designated as a representative:

- (A) Spouse, unless a formal legal action for divorce is pending;
- (B) an adult child of the individual;
- (C) a parent;
- (D) an adult brother or sister;
- (E) another adult relative of the individual;
- (F) a legal guardian; and
- (F) any other adult chosen by the individual with approval of the ISP team

(5) A waiver participant may receive a combination of supports through SDS and agency-based supports as long as services from one program do not duplicate services from the other.

(6) Employees providing personal assistance services must meet the same qualifications required for personal assistants employed by provider agencies. Employees providing personal assistance shall be provided the following information and training:

- (A) Training in procedures and expectations related to the personal assistant in regards to following and implementing the ISP;
- (B) Training on the rights and responsibilities of the employee and the individual, procedures for billing and payment, reporting and documentation requirements, procedures for arranging backup when needed, and who to contact within the regional office or local provider of targeted case management entity;
- (C) Information about the specific condition and needs of the person to be served, including his or her physical, psychological or behavioral challenges, his or her capabilities, and his or her support needs and preferences related to that support;
- (D) Training in abuse/neglect, event reporting, and confidentiality;
- (E) Training in cardio-pulmonary resuscitation and first aid;
- (F) Training in medication administration;
- (G) Training on behavioral intervention, if needed due to challenging behavior experienced by the individual. Training shall include behavioral intervention techniques such as NCI (Nonviolent Crisis Intervention), MANDT, or others approved by the Division of DD;
- (H) Training in communications skills; in understanding and respecting individual choice and direction; in cultural and ethnic diversity; in personal property and familial and social relationships; in handling conflict and complaints; and
- (I) Training in assisting with activities of daily living and instrumental activities of daily living, as needed by the individual to be served and identified by the team.

(7) The individual or their designated representative may exempt training for personal assistants under the following circumstances. The reasons for all training exemptions and safeguards must be documented in the ISP.

- (A) Duties of the personal assistant will not require skills to be attained from the training requirement; or
- (B) The personal assistant has adequate knowledge or experience as determined by the individual or the designated representative.

(8) Qualified family member(s) may only provide personal assistance under the SDS program.

When a family member provides support, the ISP must reflect:

- (A) The individual is not opposed to a family member providing the service;
- (B) The services to be provided are solely to support the individual and not household tasks expected to be shared with people living in the family unit;
- (C) The ISP team determines the paid family member will best meet the needs of the individual; and
- (D) The family member cannot be paid for over forty (40) hours per week. Support in excess of forty (40) hours per week provided by a family member is considered a natural (unpaid) support.

(9) Services that may be self or family directed are specified in each home and community-based waiver for people with developmental disabilities operated by the Division of DD and approved by the Centers for Medicare and Medicaid Services. Services included in the participant's ISP that may not be self or family directed will be delivered through agency-based supports by a provider chosen by the participant/guardian.

(10) Participants who receive services under the consumer-directed personal assistance program authorized in 19 CSR 15 Chapter 8 and administered by the Department of Health and Senior Services (DHSS) shall not also self or family-direct services under any home and community-based waiver operated by the Division of DD. Participants eligible to self-direct supports under both the DHSS consumer-directed personal assistance program and under a home and community-based waiver operated by the Division of DD must choose which program to direct supports under.

(11) Voluntary Termination: If a participant voluntarily requests to terminate self direction in order to receive services through an agency, the support coordinator will work with the participant/guardian or designated representative to select a provider agency and transition services to agency-based supports by changing prior authorizations based on the participant's needs.

(12) The option of self or family direction may be denied or terminated under any of the following conditions:

- (A) The ISP team determines the health and safety of the individual is at risk;
- (B) The participant/guardian or designated representative is unable or unwilling to ensure employee records are accurately kept;
- (C) The participant/guardian or designated representative is unable or unwilling to supervise employees to receive services according to the plan;
- (D) The participant/guardian or designated representative is unable or unwilling to use adequate supports or unable or unwilling to stay within the budget allocation; or
- (E) The participant/guardian or designated representative has been the subject of a Medicaid audit resulting in sanctions for false or fraudulent claims under 13 CSR 70-3.030 Conditions

of Provider Participation, Reimbursement, and Procedures of General Applicability,  
Sanctions for False or Fraudulent Claims for MO HealthNet.

(13) Except under circumstances described in section (13) of this rule, before terminating self-direction options, the support coordinator or appropriate staff of the regional office will first counsel the participant/guardian or designated representative to assist the participant or legal representative in understanding the issues, inform the participant or legal representative what corrective action is needed, and offer assistance in making changes. If the individual/guardian or designated representative refuses to cooperate, the option of self directing may be terminated.

(14) When there is evidence of fraud or repeated patterns or trends of non-compliance with program requirements and counseling has been provided to the participant/guardian or designated representative, the regional director may immediately terminate SDS and shall authorize agency-based services from a provider agency chosen by the participant/guardian or designated representative.

(15) When the option for self and family directed supports is terminated, the same level of services must be made available to the participant through a qualified waiver provider. The participant/guardian or designated representative shall have a choice of provider.

(16) Individual budgets, rates, and reimbursement.

(A) The individual budget allocation shall be based on the total number of hours needed for the span dates of the ISP multiplied by the statewide average hourly cost for comparable agency-based supports.

(B) The SDS budget shall be equal to but shall not exceed the level of support the individual would receive from a provider agency.

(C) Supports included in the budget to be paid through the HCBS waiver shall not supplant or duplicate natural supports available to the participant.

(D) The Department of Social Services MO HealthNet Division shall establish maximum allowable rates as recommended by DMH for all HCB supports.

(E) The participant/guardian or designated representatives may pay a wage not less than minimum wage and not in excess of the MO HealthNet maximum allowable rate. The wage includes the net pay to the employee plus all payroll taxes, worker's compensation and other insurance, if applicable.

(17) Fiscal management services (FMS).

(A) DMH shall select a FMS contractor through a competitive bid process.

(B) The FMS shall perform the following functions:

1. Managing and directing the distribution of funds contained in the individual budget allocation;
2. facilitating the employment of staff by the family or participant by performing as the participant's agent such employer responsibilities as processing payroll, withholding and filing federal state, and local taxes, and making tax payments to appropriate tax authorities;
3. performing fiscal accounting and making expenditure reports to the participant and/or family and state authorities;

4. collecting provider qualifications and training information;
5. conducting background screens of potential employee candidates;
6. collecting documentation of services provided; and
7. collecting and processing employees' time sheets;

*AUTHORITY: sections 630.050, RSMo Supp. (2013) and 630.655, RSMo (2000).\**

*\*Original authority 1980*

*Draft*